CHAPTER 5

Law and Digitization in Russia

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5.1 Introduction

"The law is a seamless web," states an old metaphor, meaning that law could be logically explained and that every new decision affects every legal proposition to a certain degree (Katsh 1993, 403). This metaphor, which originated in the common law context, has recently began to mean something else, that is, how we communicate and how we work with information. The shift from print to electronic information technologies provides the law with a new environment, one that is less fixed, less structured, less stable, and, consequently, more versatile and volatile. Law is a process that is oriented around working with information. As new modes of working with information emerge, the law cannot be expected to function or to be viewed in the same manner as it was in an era in which print was the primary communication medium. Going digital or online has profoundly affected the ways we practice law, as well as lawmaking and law functioning.

Russian state has been intensively digitalizing in the past decades. In 2009, Russian agencies, local governments, courts, and the Department of Justice were obliged to provide all information about their activities online, thus finalizing the process of going digital (Federal Law N 8-FZ 2009; Federal Law N 262-FZ 2008; Strategy of the Development of Information Society 2008). The first steps toward legal provisions for using digital information came in 1984, when the Union of Soviet Socialist Republics (USSR) issued its standard for unified systems of documentation—*GOST*—that outlined requirements for documents stored or created using computer technologies (USSR State Committee on Standards 1984). The 1984 standard responded to increasing

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D. Gritsenko et al. (eds.), *The Palgrave Handbook of Digital Russia Studies*, https://doi.org/10.1007/978-3-030-42855-6_5

demand on behalf of the Soviet legal system to handle electronic documents following the State Commercial Arbitration Court's guidance on the usage of e-documents as evidence and the Supreme Court's ruling allowing the use of e-documents in litigation and pleading (The State Arbitrage of the USSR 1979; The Plenum of the Supreme Court of the USSR 1982). The country entered the 1990s equipped with relevant legislation, which continued to be in force even during profound political and legal reforms. Taking a course toward democracy, access and openness of information became primary principles of legislation, at least on paper. At the same time, pressures from transitions to a market economy pushed legislation to accommodate models of electronic commerce, facsimile and electronic signatures, and other digital means of transactions (Art. 160.2 and 434.2 of the Civil Code of the Russian Federation; Federal Law N 1-FZ 2002). By the time the concept of open government, that is that citizens have the right to access the documents and proceedings of the government to allow for effective public oversight (Evans and Campos 2013), gained the attention of the Russian government in the late 1990s, Russian society and state agencies had sufficient experience in working with electronic documents and a good level of computer literacy (Vinogradova and Moiseeva 2015; Fedorov 2009).

Scholars call the increasing of electronic document processing "technicalization" or "electronification" (Gilles 2014). Legal scholarship, both in the subfields of law and technology (i.e., cyberlaw) and law and society (i.e., sociolegal studies), has struggled with theorization and analysis of technological change. Though largely ignored in sociolegal studies, the law's relationship to technology is central to the field of cyberlaw, where it is portrayed as linear: a new technology is presented to society and the law must move quickly to respond to the disorder technology creates (Jones 2018). The debate on "technological exceptionalism" in cyberlaw was started by Ryan Calo, who explained that technological exceptionalism occurs

> when [a technology's] introduction into the mainstream requires a systematic change to the law or legal institutions in order to reproduce, or if necessary, displace, an existing balance of values. (Calo 2015, 552)

For any national legal system, this means that law needs to adapt to new technologies, which poses the question of to which degree this adaptation influences legal contents and legal values (Keen 2010). This question is specifically important for the Russian legal context in connection with contemporary problematic approaches to governance and democracy.

In this chapter, we will focus on legal transformations as a result of two important developments in Russia: Russia's adaptation of the concept of open government and Russia's joining digital economy. Both processes led to the development of e-justice, that included not only digitalization of legal documents, but development of new legal digital platforms, provision of safe legal environment for economic transactions online (such as blockchain) and

necessity to establish new means of internet control in relation to cybercrime and data protection.

5.2 Open Government Project and Digitalization of Law

In Russia, the concept of open government was introduced in 2002 by the federal target program "*Èlektronnaâ Rossiâ*" (Electronic Russia). The document stated that it aimed at

> improving the quality of mutual communication between the state and society by expanding the access to information about activities of the state agencies, improving efficiency of providing state and municipal services, introducing unified standards of population services. (Federal Target Program "Electronic Russia" 2002)

The program followed the notion of open government as closely related to information status, where more information is published and, at some stage, the quality of information is an indicator of such openness. The program first provided legal foundations for extensive utilization of information and communication technologies (ICT) in regard to open government and available data, as well as increased communication among all stakeholders. At the time, the idea was closely linked with four major dimensions in open government: service provision to citizens and businesses, government performance improvement, social inclusion and development, and e-democracy and participation (Evans and Campos 2013). Russians quickly learned to be digital citizens (Rasskazova and Soldatova 2014). Digital citizens are generally identified as "those who use the Internet regularly and effectively" (Mossberger et al. 2008). Not only this, but digital citizenship means the ability to use technology competently; to interpret and understand digital content and to assess its credibility; to create, research, and communicate with appropriate tools; to think critically about the ethical opportunities and challenges of the digital world; and to make safe, responsible, respectful choices online (Ribble 2015). This became evident when digital platforms started working in Russia by 2010. The "Electronic Russia" program experienced a number of problems, including funding and absence of efficient cooperation between relevant agencies (Irkhin 2007). However, it provided a framework for development of e-platforms that facilitated access to state services and, as part of it, legal services. One of the first platforms—*Edinyj portal gosudarstvennyh uslug i funkcij* (*Public Services Portal*, https://www.gosuslugi.ru/), or *Gosuslugi* (StateService) for short—which started running in 2010, provided initial access to legal services such as facilitating the issuance of a variety of ID papers (international and domestic passports, driving license, and so on), or access to any court's decision in relation to them. Russians were initiated into e-law by allowing them to review and pay traffic and other penalties via *Gosuslugi* online without dealing with the authorities in person. These days, the majority of state and law-related

actions could be initiated or done online with a *Gosuslugi* account, including launching a criminal or civil complaint, or submitting evidence to the commercial courts (see the next section). Since its launch and initial 335,000 users, *Gosuslugi* has developed into an e-service of everyday use with 86 million users and 582 million logins every day in 2018 (Tadviser 2019).

Together with *Gosuslugi*, main legal actors, as per the 2009 law, opened their webpages for interactional use. In 2006, *GAS* (*Gosudarstvennaâ avtomatizirovannaâ sistema*, State Automated System) *"Pravosudie"* (Justice, https://sudrf.ru/) was launched: it includes digital copies of decisions and judgments of all level courts in the Russian Federation. In 2016, commercial arbitration courts in the Russian Federation launched *Moi Arbitr* (My Arbiter, https://my.arbitr.ru/) portal, which allows for the submission of all paperwork related to a pending case online. In 2017, the Supreme Court of the Russian Federation also opened an online possibility (http://www.supcourt.ru/appeals/) to launch a complaint via its website using a *Gosuslugi* account. Once the possibility to use e-services became available, Russians started increasingly using them: in 2019, almost 70 percent of all complaints, addresses, and requests to state agencies are communicated online (Upravlenie Prezidenta po rabote s obraŝeniâmi graždan i organizacij [Administration of the President for Work with Citizens and Organizations] 2019; for more, also see Chap. 22).

Political scientists point to a lack of democracy and classify the Russian regime as authoritarian (Ambrosio 2016). Linde and Karlsson suggest that authoritarian regimes set up e-government as a response to pressures of globalization, as well as to demonstrate modernity and legitimacy to the international community (Linde and Karlsson 2013). At the same time, others argue that this hypothesis does not account for variations of e-government across different types of authoritarian regimes. Maerz (2016), in her qualitative assessment of four post-Soviet authoritarian regimes, points to crucial differences of how e-government is used to legitimate authoritarianism. While the noncompetitive regimes of Turkmenistan and Uzbekistan create their web presences primarily for an international audience, she finds a surprising citizen-responsiveness on websites of the competitive regimes of Kazakhstan and Russia. Russians exercise their rights by extensive use of digital services and online participation in state, electoral, and judicial institutions, thus proving their interest in active citizenship (for more, see Chap. 3).

5.3 E-justice: Digitalization and Legal Procedure

The concept of e-justice can be interpreted in multiple ways. A broad definition of e-justice can cover ICT usage in the areas of crime prevention, administration of justice, and law enforcement (Xanthoulis 2010). Furthermore, e-justice for the administration of justice contains multiple subareas. These include usage of information technologies (IT) in general, electronic methods for communication (e.g., e-mail, videoconferencing), electronic case management

systems, and court room technology. E-justice can even offer citizens electronic services such as online access to case files. The Russian e-justice system developed via incorporating these subareas and trying to deal with difficulties in managing open access and data protection policies at the same time.

The development and implementation of an e-justice system entails, by its own nature, the reshaping of "institutions," norms, and conventions that provide an implicit context for the performance of practices. In a process that Giovan Francesco Lanzara (2009) tries to capture with the concept of *assemblage*, e-justice systems are built linking and reshaping heterogeneous components and building blocks of technological, which are organizational and normative in nature. The new system comes from reusing, copying, adapting, and hooking together existing components, more than developing from scratch. In this process, different uses of technical, organizational, and normative components generate more or less visible shifts in their features and meanings of law and legal values, features and meanings (such as, for example, the very notion of justice) that are often invisible and taken for granted by the community of practitioners dealing with them. New actors, such as technological partners and network providers, make their appearance. Power and organizational borders alter, as "who-does-what" changes in the translation of procedures from paper to digital and from one form of digital to another (Velicogna 2011).

In Russia, the *assemblage* in terms of e-justice works quite efficiently. Russian e-justice system includes two key units. The first is a secured videoconference net, connecting all courts of the Russian Federation with direct access to the Internet through overt streaming video broadcasting channels, such as popular video hosting. The second is a group of portals of *GAS "Pravosudie"* on the Internet providing access for any person anywhere in the world with up-to-date information of the work of federal courts. The key principle of this portal's functioning is to ensure transparency of justice, both in respect to procedures and access to the judicial acts in controversial cases. The system of commercial arbitration courts also has its own videoconference net and portal—*Moi Arbitr* (My Arbitrator). Both change ways and practices of administering justice and access to justice.

In terms of administering justice, the e-justice system in Russia allows for effective and cost-efficient notification of the date, time, and place of court hearings to all parties of a particular proceeding. There is a mailing system through e-mail on the portals of the *GAS "Pravosudie," Moi Arbitr*, and *Gosuslugi*. One can download mobile applications supporting push notifications for new events and documents. Experts note that wide-scale adoption of these information technologies into work practices of the justice system has another advantage: it offers wide opportunities for court statistics to be automated and hence, early detection of court red tape and other procedural violations. When every judge in Russia is under restrictions to provide procedural documents in due time and up-to-date information of cases available on servers of the system, the court procedure and administration become more responsible and performance discipline sustainable on the proper level (Soloviev and Filippov 2013; Bykodorova 2015; Bonner 2018).

With electronic access to courtrooms both in civil and criminal justice that opened on January 1, 2017, Russian citizens could easily launch an e-complaint via already-existing systems *Gosuslugi* and *GAS "Pravosudie."* Since 2017, the number of complaints using *GAS "Pravosudie"* has doubled and now comprise more than 10 percent of all complaints to Russian courts (Epifanova 2019). The majority of complaints come from businesses. However, using digital platforms increased the demand for attorneys who now become intermediaries between citizens and courts: it is often them who file an electronic complaint, so their skill set has changed to include digital literacy and technical ability to navigate digital services. The possibility of launching a complaint online also generated a debate on the future of Russian justice system: if the country was heading toward "digital judges" and "digital attorneys." In January 2017, Vadim Kulik, the deputy head of the executive board of Sberbank, announced that legal robot, which Sberbank had launched in 2016, would result in 3000 positions being vacated.[1] German Gref, the chief executive officer (CEO) of Sberbank, also confirmed that they would stop hire lawyers without digital skills (Savkin 2017).

The most crucial improvement with introduction of e-justice as legal professionals see it is an automated process of assigning cases which should increase judicial independence and transparency (Nagornaja 2019). However, the consensus is that while artificial intelligence (AI) -based technologies are a positive improvement, they cannot substitute a human legal professional (Kurash 2017). At the same time, digital economies and legal provisions for online transactions have demonstrated that in the processes that could be automated via using algorithms, the usage of AI-based legal technologies is warranted. Russian government has been quite apt to push for legislation that supports commercial and business digital environments by introducing such notions as "digital rights" into its civil legislation and allowing "smart-contracts," which is essentially automated service for execution of legal contract. These changes have been happening at the background of Russian e-justice debate and are discussed in the next section in more detail.

5.4 Law and Digital Economy: Blockchain and Crowdfunding

The original digitalization of economic transactions required fundamental changes in laws protecting data and ensuring the safety of emerging digital economies. Moving to cryptocurrency and online transactions using blockchain involved serious changes in civil, business, and commercial law that regulated market economy not only in Russia but also globally. Economic relationships involving cryptocurrency and blockchain tokens have become more organized and less volatile. Several countries are attempting to create a comfortable business and regulatory climate for prospective actors in this sphere (On the development of the digital economy 2017; Cryptocurrency

Offerings 2017). In October 2017, Vladimir Putin instructed the government and Central Bank of Russia to draft provisions regulating blockchain, cryptocurrency, smart-contracts, and tokens (Presidential Instruction On Digital Economy) by July 1, 2018. In March 2018, State Duma received draft laws "*Ob al'ternativnyh sposobah privlečeniâ investirovaniâ*" (On alternative means for attracting investments) and "*O cifrovyh finansovyh aktivah*" (On digital financial assets).

Discussions on the legal nature of blockchain tokens intensified in Russia as it became the subject matter in a bankruptcy proceeding in the case of *Car'kov v. Financial manager Leonov*. Car'kov, an insolvent individual, possessed a certain amount of bitcoins. A bankruptcy proceedings manager discovered the bitcoins and asked the commercial court of the city of Moscow to include them in bankruptcy assets. The court denied the request because Russian legislation does not regulate cryptocurrencies. The Ninth Commercial Appellate Court rectified this mistake. The court considered that Car'kov could exercise similar rights regarding bitcoins on his account as a property owner would exercise toward one's property. The court noted that the Russian civil procedure legislation establishes a list of property that cannot be levied. Cryptocurrency does not fall under such exceptions. Therefore, the court decided to include cryptocurrency in bankruptcy assets. Despite the issue being resolved by the courts, bankruptcy proceedings were only one sphere, alongside taxation and inheritance, affected by the lack of regulation of blockchain-based relations (Sannikova and Haritonova 2018, 88; Bessonova and Kasianov 2018, 69; Kuznecov and Chumachenko 2018, 100).

State Duma hesitated to pass the laws on the digital economy until in February 2019 Putin issued another Instruction setting the deadline for such laws for July 2019 (Presidential Instruction On implementing the Presidential Message to the Federal Assembly). In March 2019, State Duma amended the general part of the Russian Civil Code, the foundational source of civil law, with provisions aimed at regulating the digital economy. The legislator introduced Art. 141.1 "*Cifrovye prava*" (Digital rights) to the Civil Code. Digital rights are a new object of civil rights in Russia. State Duma did not follow the draft law "On digital financial assets" or Russian legal commentaries suggesting to regulate cryptocurrencies as digital money, securities, or property (Sazhenov 2018, 108; Kuznecov 2018, 99; Fedorov 2018, 54). The amendment defines digital rights by using a model that is rather close to the definition of securities in article 142 of the Civil Code. That decision follows the line outlined by Putin and Russian Central Bank representatives, that ruble will remain the only legal tender currency in Russia.

These amendments to the Civil Code introduced regulations for the smart-contracts—computer protocols that facilitate the execution of a contract. Formally, Russian legislator implemented the Presidential Instruction—the Civil Code regulates smart-contracts. At the same time, this amendment does not change Russian contract law. It introduces smart-contracts as a contractual

provision and not as a separate type of contract. A provision that parties could have agreed for prior to the amendments.

Establishing the category of digital rights and regulating smart-contracts in the Civil Code laid a foundation for the development of further regulations on the digital economy. The Government of Russia announced the aim to develop this sphere in the 2016 strategy for the development of small and mid-size businesses. In Clause IV(4), the strategy declares a goal of developing new solutions for alternative sources of financing, including crowdfunding, for high-tech companies. The 2017 Presidential Instruction on Digital Economy required to draft the laws regulating Initial Coin Offering (ICO) by July 2018. ICO is a fundraising method used by companies primarily offering blockchain-connected products or services. The draft law stated the goal of following the approaches that successfully implement developed countries (Explanatory Note to Draft Law on Crowdfunding). By October 2019, the law "On attracting investments using the investment platforms (crowdfunding)" passed the third reading in the State Duma and enters into force from 2020. Before enactment of this law, there were already companies acting as crowdfunding platforms in Russia (Nekrasova and Shumejko 2017, 115). They needed to comply with the law by July 1, 2020.

A company can raise funds in an ICO by using different types of blockchain tokens. Most common types are utility tokens, investment tokens, and cryptocurrencies (Hacker and Thomale 2018, 108; Zetzsche et al. 2018, 11–12). The crowdfunding law only regulates utility tokens. Investment tokens and cryptocurrencies fall out of its scope and remain in the legal vacuum. The current law creates an ambiguity. On the one hand, it aims to regulate the relations in connection to investment—that is essential to attract investments. On the other hand, the law only defines utility tokens and avoids introducing investment tokens. The crucial component that distinguishes an investment token is the expectation of profits. In defining utility tokens, the Russian legislator excludes expectation of profits from what can be offered by utility tokens. The law thus creates a device whereby investors enter into investment relations without being able to receive an "investment" (in the true meaning of this term) in exchange for their contribution to a fundraising project. Such activity on behalf of the investors cannot be called investment. What they do is a purchase of goods or services paid upfront.

The law does not account for the technological realities of current blockchain crowdfunding platforms and excludes them from being recognized as an investment mechanism, denying legal protection to investors. Following Art. 13(8) of the Crowdfunding law, investments on the investment platform can only be done using noncash money. The Committee on Economic Policy, Industry, Innovational Development, and Entrepreneurship pointed out (Draft federal law N 419090-7 2018), that such limitation will exclude platforms offering Initial Coin Offering (ICO) services. Those platforms are technically not capable of handling regular money and can only operate with investors who exchange their money into cryptocurrency first. The circle

closes—following Art. 8(7) of the law, utility digital rights can only originate within the investment platform and investment platforms can only operate with noncash money. ICO platforms cannot operate with noncash money and thus cannot become investment platforms.

The initiatives for implementing the digital economy and creating the infrastructure for working with cryptocurrencies, smart-contracts, and ICO came from Vladimir Putin. In implementing these initiatives, State Duma failed to create a predictable regime that could compete with the leaders of digital economy like the United States, Switzerland, or Singapore. To reach the goal of securing alternative sources of financing for Russian small and mid-size businesses and reduce the capital flight from Russia, the legislation needed the introduction of investment digital rights. The law on crowdfunding could have done that. The Russian legislator took a cautious path by avoiding the regulation of investment tokens. Such partial regulation will likely alarm investors and start-ups from setting up their business in Russia.

5.5 Cyberlaw and Regulation of Runet

Moving online also requires new approaches to the regulation of cyberspace. Personal data protection becomes of primary concern (for more, see Chap. 6). The Russian government has tightened its control and supervision of cyberspace significantly in the last decade. The academic literature often sees this process in the context of containing opposition and political protest (Maréchal 2017; Ramesh et al. 2020). However, at the same time cyberspace faces challenges on its own and provides new opportunities for criminal or civil misbehavior, including the following: spreading of computer worms, viruses, bots, as well as other malware and spyware; illicitly accessing computers; exceeding authorized access; trafficking in information; enabling or facilitating unauthorized activities in cyberspace; and using information, communications systems, and networks to embezzle, commit fraud, stalk and harass, or invade the privacy of others (Ryan et al. 2011). Therefore, regulating cyberspace falls under a variety of control tools that the government uses for both censorship and crime prevention.

Several government authorities actively participate in regulating and supervising the telecommunications sector. The most important ones include: *Minkomsvâz'* (Ministry of Communications and Mass Media), *Roskomnadzor* (Federal Service for Supervision of Communications, Information Technology and Mass Media), *Rossvâz'* (Federal Communications Agency), and *Rospečat'* (Federal Agency for Press and Mass Communications of the Russian Federation). As a result of administrative reform, conducted in 2004, ministries define state policy and perform regulatory activities, while state services and agencies perform executive and supervisory functions (Bogdanovskaya et al. 2016).

Roskomnadzor is the main watchdog over the Runet and manages the information controls regime in Russia. It is tasked with a wide range of

competences, including silencing of mass media and audiovisual platforms, as well as management of a list of operators. In December 2011, the Ministry of Communications issued a new administrative regulation "*O vedenii reestra operatorov, osuîestvlâûîsih obrabotku personal'nyh dannyh*" (On introducing the register of operators processing personal data), which significantly increased data protection control. In 2012–2016, Federal Law N 149-FZ "*Ob informacii, informacionnyh tehnologiâh i o zaîite informacii*" (On Information, Information technologies and Protection of Information) was significantly amended to accommodate changes in relation to (1) a package of protectionist legislation prohibiting promotion of nontraditional sexual relations among minors and dissemination of information harmful to health and development of minors and (2) a package of security legislation known as "Yarovaya laws" (for more, see Chap. 6). The latest 2019 controversial amendment added Art. 15.1-1 limiting access to "indecent" information that insult human dignity and offend public decency, express blatant disrespect for the public, the state, official state symbols of the Russian Federation, Constitution of the Russian Federation (RF), or state agencies. These amendments produced an increasing amount of complaints to *Roskomandzor* and Russian courts.[2]

Nathalie Maréchal (2017) argues that Russia does not view internet governance, cybersecurity, and media policy as separate domains, which enable strong information controls. Other scholars identify Russian policies as "decentralized control" due to the lack of direct ownership of Internet Service Providers (ISP) by government authorities. This lowers their ability to unilaterally roll out technical censorship measures, instead pushing the state to enact controls via law and policy, compelling their network owners to comply, which subsequently significantly increases censorship (Ramesh et al. 2020).

5.6 Conclusions

Digitalization of law and legal services has positive and negative effects on human rights and everyday lives of citizens. Following global going online, Russia has achieved impressive results in providing e-services, as well as access to state and private digital information and resources. Access to e-courts removes certain barriers in accessing justice for vulnerable groups and makes litigation more transparent and effective. Digital citizens have a wide range of strategies to navigate cyberspace to improve their quality of life. However, these achievements have come at significant cost for law, the legal system, as well as public and private individuals, especially in an authoritarian political framework.

The ongoing legalization of judicial or procedural phenomena by the creation of e-justice or e-procedural norms also represents a strong move toward what is here called "formalization" or even hyperformalization, to an extent never before seen in history (Gilles 2014). This hyperformalization is needed for smoothing the work of ICTs and for efficiency of administering justice

online, but it often lacks flexibility and has a profound impact on quality and content of law. In the Russian case, law had been formalistic before the digital turn; it has become even more so since. This hyperformalization is positive for business and market economy, especially in a global dimension, but might be harmful for private citizens.

Digitalization of law has brought a new level of surveillance, censorship, and information control that has not been available before. The law once again serves as an instrument of political manipulation, which leads to even further formalization of procedures and uses of e-justice to curtail freedoms of speech and other human rights. High levels of securitization will demand a further increase in censorship and surveillance as Russia heads toward creating an internet "kill switch." This would allow the Russian state to disconnect the Runet from the global network "in case of crisis," without specifying what such a crisis might entail beyond vague allusions to the internet being shut off from the outside (Duffy 2015; Nocetti 2015). This uncertainly and mistrust of due process and the government's intentions create further anxiety in civil society (for more, see Chap. 8), which consolidates its activism online, but feels a tightening surveillance and prosecution of its activities due to instrumental use of digital law. In this respect, Russia is an example of successful usage of e-government and e-law by authoritarian regimes as it leverages globalization for its own political ends.

Notes

1. https://www.interfax.ru/business/545109.
2. According to the *Roskomnadzor*'s reports, the amount of complaints increased significantly between 2012 and 2013 from 26,287 to 86,274; by 2019, 154,914 complaints had been filed. See Federal Service for Supervision of Communications, Information Technology and Mass Media of the Russian Federation. Report on the processing of communications from the citizens of the RF for 2018, available here: https://rkn.gov.ru/treatments/p436/.

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